



Reprinted
April 9, 2005

ENGROSSED HOUSE BILL No. 1646

DIGEST OF HB 1646 (Updated April 8, 2005 5:55 pm - DI 92)

Citations Affected: IC 23-2; IC 27-8; noncode.

Synopsis: Viatical settlements. Prohibits certain actions related to viatical settlement contracts. Amends the statutes of limitations for certain actions concerning securities violations involving certain viatical settlement contracts. Requires a viatical settlement broker and a viatical settlement agent to obtain a viatical settlement intermediary license. Specifies requirements for a viatical settlement intermediary license.

Effective: Upon passage.

Ripley, Fry

(SENATE SPONSORS — YOUNG R MICHAEL, LEWIS)

January 19, 2005, read first time and referred to Committee on Insurance.
February 8, 2005, amended, reported — Do Pass.
February 17, 2005, read second time, amended, ordered engrossed.
February 18, 2005, engrossed.
February 21, 2005, read third time, passed. Yeas 94, nays 1.

SENATE ACTION

February 24, 2005, read first time and referred to Committee on Insurance and Financial Institutions.
March 29, 2005, amended, reported favorably — Do Pass.
April 8, 2005, read second time, amended, ordered engrossed.

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Reprinted
April 9, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1646

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-2-1-17.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 17.5. (a) This section applies to the**
4 **following:**

5 (1) **The secretary of state.**

6 (2) **The securities commissioner.**

7 (3) **A prosecuting attorney.**

8 (4) **The attorney general.**

9 (5) **A designee of a person specified in subdivisions (1) through**
10 **(4).**

11 (6) **Any party with a cause of action under IC 23-2-1-19.**

12 (b) **A person specified in subsection (a) shall not take any action**
13 **against another person under this chapter because a:**

14 (1) **viatical settlement contract; or**

15 (2) **fractional or pooled interest in a viatical settlement**
16 **contract;**

17 **that was the subject of a transaction in which the other person was**

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involved before March 17, 2000, was not registered under this chapter.

(c) A person specified in subsection (a) shall not take any action against another person under this chapter solely because the other person did not, before March 17, 2000, comply with the:

(1) registration requirements of this chapter; or

(2) requirements of this chapter that apply to a person that offers or sells securities in Indiana;

if the other person did not at the time of the offer or sale, and before March 17, 2000, offer or sell securities other than a viatical settlement contract or a fractional or pooled interest in a viatical settlement contract.

(d) A person specified in subsection (a) shall not take any action against another person under this chapter solely because the other person did not comply with the registration requirements referred to in subsections (b) and (c).

SECTION 2. IC 23-2-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) A person who offers or sells a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation, who may sue either at law or in equity to rescind the transaction or to recover the consideration paid, together, in either case, with interest as computed in subsection (g)(1), plus costs, and reasonable attorney's fees, less the amount of any cash or other property received on the security upon the tender of the security by the person bringing the action or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(1) the value of the security when the buyer disposed of the security; and

(2) the interest as computed in subsection (g)(1) on the value of the security from the date of disposition.

(b) A person who purchases a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation. The other party to the transaction may bring an action to rescind the transaction or for

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1 damages, together, in either case, with reasonable attorney's fees, upon
 2 the tender of the consideration received by the person bringing the
 3 action.

4 (c) A person who, for compensation, engages in the business of
 5 advising others, either directly or through publications or writings, as
 6 to the value of securities or as to the advisability of investing in,
 7 purchasing, or selling securities, or who, for compensation and as a part
 8 of a regular business, issues analyses or reports concerning securities
 9 and:

10 (1) violates section 8, 12.1(b), 14, or 26 of this chapter;

11 (2) employs a device, scheme, or artifice to defraud a person; or

12 (3) engages in an act that operates or would operate as fraud or
 13 deceit upon a person;

14 is liable to the other person, who may bring an action to recover any
 15 consideration paid for advice, any loss due to advice, interest at eight
 16 percent (8%) each year from the date consideration was paid, costs, and
 17 reasonable attorney's fees less the value of cash or property received
 18 due to the advice. It is a defense to an action brought for a violation of
 19 section 12.1(b) or 26 of this chapter that the person accused of the
 20 violation did not know of the violation and, exercising reasonable care,
 21 could not have known of the violation.

22 (d) A person who directly or indirectly controls a person liable
 23 under subsection (a), (b), or (c), a partner, officer, or director of the
 24 person, a person occupying a similar status or performing similar
 25 functions, an employee of a person who materially aids in the conduct
 26 creating the liability, and a broker-dealer or agent who materially aids
 27 in the conduct are also liable jointly and severally with and to the same
 28 extent as the person, unless the person who is liable sustains the burden
 29 of proof that the person did not know, and in the exercise of reasonable
 30 care could not have known, of the existence of the facts by reason of
 31 which the liability is alleged to exist. There is contribution as in cases
 32 of contract among the several persons liable.

33 (e) A tender specified in this section may be made at any time
 34 before entry of judgment.

35 (f) A cause of action under this statute survives the death of a person
 36 who might have been a plaintiff or defendant.

37 (g) Action under this section shall be commenced within three (3)
 38 years after discovery by the person bringing the action of a violation of
 39 this chapter, and not afterwards, **but in no event shall an action be**
 40 **commenced more than five (5) years after the purchase or sale of**
 41 **a viatical settlement contract or fractional or pooled interest in a**
 42 **viatical settlement contract that occurred before March 17, 2000.**

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This section does not affect a remedy to an individual bringing action under IC 34 or IC 27. No person may sue under this section:

(1) if that person received a written offer, before suit and at a time when the person owned the security, to refund the consideration paid together with interest on that amount from the date of payment to the date of repayment, with interest on:

(A) interest-bearing obligations to be computed at the same rate as provided on the security; and

(B) all other securities at the rate of eight percent (8%) per year;

less the amount of any income received on the security, and the person failed to accept the offer within thirty (30) days of its receipt; or

(2) if the person received an offer before suit and at a time when the person did not own the security, unless the person rejected the offer in writing within thirty (30) days of its receipt.

(h) No person who has made or engaged in the performance of a contract in violation of this chapter or a rule or order under this chapter, or who has acquired a purported right under a contract with knowledge of the facts by reason of which its making or performance was in violation, may base a suit on the contract.

(i) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.

(j) The rights and remedies specifically prescribed by this chapter are the only rights and remedies created by this chapter, but are in addition to any other rights or remedies that exist at law or in equity.

SECTION 3. IC 27-8-19.8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, "applicant" refers to **an applicant a person that is a:**

(1) viatical settlement intermediary that applies for a viatical settlement intermediary license; or

(2) viatical settlement provider that applies for a viatical settlement provider license;

under this chapter.

SECTION 4. IC 27-8-19.8-1.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.7. As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.**

SECTION 5. IC 27-8-19.8-4.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.3. As used in this

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chapter, "viatical settlement agent" means a person that:

(1) **represents a viatical settlement provider; and**

(2) solicits, offers, or attempts to negotiate a viatical settlement contract with a viator.

SECTION 6. IC 27-8-19.8-4.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.7. As used in this chapter, "viatical settlement intermediary" means the following:**

(1) **A viatical settlement agent.**

(2) **A viatical settlement broker.**

SECTION 7. IC 27-8-19.8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6. As used in this chapter, "viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of a portion of the death benefit or ownership of a life insurance policy or contract that insures the life of an insured** for consideration that is less than the expected death benefit of the life insurance policy or contract. The term does not include the following:

(1) A loan by an insurer under the terms of a life insurance policy, including a loan secured by the cash value of a policy.

(2) An agreement with a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.

(3) The provision of accelerated death benefits by an insurer to an insured under the provisions of a life insurance contract.

(4) Agreements between an insurer and a reinsurer.

(5) An agreement by a person who enters into not more than one (1) such agreement in any five (5) year period to purchase a life insurance policy or contract for the transfer of a life insurance policy for a value that is less than the expected death benefit.

SECTION 8. IC 27-8-19.8-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.5. In addition to the licensure requirement specified in section 9(1) of this chapter, the following must be licensed as an insurance producer with a life qualification under IC 27-1-15.6-7:**

(1) A viatical settlement broker.

(2) A ~~person who solicits, offers, or attempts to negotiate a viatical settlement contract with a viator:~~ **agent.**

SECTION 9. IC 27-8-19.8-8.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.6. The following are exempt from the licensing requirement under IC 27-8-19.8-8.5:**

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requirements of sections 8.5 and 9(1) of this chapter:

(1) An accountant, an attorney, or a financial planner retained to represent the viator, and whose compensation is paid directly by or at the direction of the viator.

(2) A regularly salaried officer or employee of a viatical settlement broker or viatical settlement provider, if the officer or employee's duties and responsibilities do not include the solicitation or negotiation of viatical settlement contracts.

(3) The following persons, to the extent that the person is engaged in the administration or operation of a program of employee benefits for the person's employees or the employees of the person's subsidiaries or affiliates involving the use of viatical settlement contracts issued by a licensed viatical settlement provider, if the person is not in any manner directly or indirectly compensated by the viatical settlement provider:

(A) An employer.

(B) An officer or employee of an employer.

(C) A trustee of an employee trust plan.

SECTION 10. IC 27-8-19.8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. ~~After December 31, 1998~~, A person may not act as a:

(1) viatical settlement intermediary unless the person holds an unexpired viatical settlement intermediary license; or

(2) viatical settlement provider unless the person holds an unexpired viatical settlement provider license;

issued under this chapter.

SECTION 11. IC 27-8-19.8-9.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9.2. An insurance producer that:**

(1) is licensed under IC 27-1-15.6; and

(2) sells a life insurance policy or contract that, less than two (2) years after the insurance producer sells the policy or contract, is the subject of a viatical settlement contract;

shall not accept a commission or other remuneration in connection with the viatical settlement contract.

SECTION 12. IC 27-8-19.8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) An applicant must do the following to obtain a license ~~as a viatical settlement provider~~: **under this chapter:**

(1) Apply for the license on forms prescribed by the department.

(2) Provide information required by the department.

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(3) Pay the license fee.

(b) ~~The An~~ application for a viatical settlement provider license must include the name of each officer, member, or employee of the viatical settlement provider applicant who will be authorized by the viatical settlement provider applicant to act as a viatical settlement provider under the license if issued to the viatical settlement provider applicant.

(c) The department shall adopt rules under IC 4-22-2 to set the licensing fee required by this section.

SECTION 13. IC 27-8-19.8-10.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10.1. (a) The commissioner shall, not later than December 31, 2005, designate a viatical settlement intermediary examination for use in licensing of a viatical settlement intermediary under this chapter. Part of the examination must cover life insurance aspects of viatical settlements.**

(b) Except as provided in subsection (c), a viatical settlement intermediary must pass the viatical settlement intermediary examination designated under subsection (a) with a score of at least seventy percent (70%) as a condition of licensure as a viatical settlement intermediary under this chapter.

(c) A viatical settlement intermediary who:

(1) holds an insurance producer license with a life qualification under IC 27-1-15.6-7 for more than one (1) year; and

(2) is in good standing with the department; is exempt from the life insurance part of the viatical settlement intermediary examination designated under subsection (a).

(d) A viatical settlement intermediary who passes a viatical settlement intermediary examination that is:

(1) designated by the state department of insurance of another state; and

(2) determined by the commissioner to be substantially similar to the viatical settlement intermediary examination designated under subsection (a);

with a score of at least seventy percent (70%) has satisfied the requirement of subsection (b).

SECTION 14. IC 27-8-19.8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.** The department shall investigate an applicant and issue a license to the applicant if the department finds all of the following:

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(1) The applicant is competent and trustworthy and intends to act in good faith as a viatical settlement provider **or viatical settlement intermediary**.

(2) The applicant has a good business reputation.

(3) The applicant has had the experience, training, or education to qualify the applicant as a viatical settlement provider **or viatical settlement intermediary**.

(4) If the applicant is a corporation, or limited liability corporation, it is either:

(A) incorporated under Indiana law; or

(B) authorized to do business in Indiana.

SECTION 15. IC 27-8-19.8-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. **(a) Except as provided in subsection (b), a viatical settlement intermediary who is not a resident of Indiana may receive a nonresident viatical settlement intermediary license under this chapter if the viatical settlement intermediary:**

(1) is licensed as a resident and in good standing in the viatical settlement intermediary's home state, as determined by the commissioner;

(2) has submitted to the department an application for licensure; and

(3) has complied with this chapter.

(b) The department may not issue a license to an applicant who is not an Indiana resident unless the applicant does either of the following:

(1) Files and maintains with the department a written designation of an agent for service of process.

(2) Files with the department the applicant's written irrevocable consent that any action against the applicant may be begun against the applicant by the service of process on the department.

SECTION 16. IC 27-8-19.8-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. A **viatical settlement provider** license issued under this chapter authorizes all officers, members, and employees of the license holder designated under section 10(b) of this chapter to act as viatical settlement providers under the **viatical settlement provider** license.

SECTION 17. IC 27-8-19.8-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) A **viatical settlement provider** license issued or renewed under this chapter expires on July 1 after its issuance or renewal.

(b) A viatical settlement provider may renew a **viatical settlement**

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provider license by:

(1) applying for renewal on forms prescribed by the department;
and

(2) paying the renewal fee.

(c) The department shall adopt rules under IC 4-22-2 to do the following:

(1) Set the renewal fee required by this section.

(2) Set a date before July 1 and before which receipt of a **viatical settlement provider** license renewal application can be processed without a lapse in the **viatical settlement provider** license.

(d) A viatical settlement provider that submits an application for renewal after the date set under subsection (c)(2):

(1) is not entitled to have the **viatical settlement provider** license renewed before July 1; and

(2) may not act as a viatical settlement provider until the department issues the **viatical settlement provider** license renewal, if the department is unable to process the renewal before July 1.

SECTION 18. IC 27-8-19.8-15.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.1. (a) A viatical settlement intermediary license must be renewed on July 1 of the fourth year after the license is issued or renewed.**

(b) A viatical settlement intermediary may renew a viatical settlement intermediary license by:

(1) applying for renewal on forms prescribed by the department; and

(2) paying the renewal fee of twenty dollars (\$20).

(c) The department shall adopt rules under IC 4-22-2 to set a date before July 1 and before which receipt of a viatical settlement intermediary license renewal application can be processed without a lapse in the viatical settlement intermediary license.

(d) A viatical settlement intermediary that submits an application for renewal after the date set under subsection (c):

(1) is not entitled to have the viatical settlement intermediary license renewed before July 1; and

(2) may not act as a viatical settlement intermediary until the department issues the viatical settlement intermediary license renewal, if the department is unable to process the renewal before July 1.

SECTION 19. IC 27-8-19.8-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 16. The department**

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1 may at any time require a viatical settlement provider or an applicant
 2 for a **viatical settlement provider** license to disclose fully the identity
 3 of all of the viatical settlement provider's or applicant's officers,
 4 employees, partners, and stockholders.

5 SECTION 20. IC 27-8-19.8-18 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) When the
 7 department reasonably considers it necessary for the protection of the
 8 public, the department may examine the business and other affairs of
 9 a viatical settlement provider or ~~an~~ a **viatical settlement provider**
 10 applicant.

11 (b) The department may order a viatical settlement provider or ~~an~~
 12 a **viatical settlement provider** applicant to produce records, books,
 13 files, or other information reasonably necessary to ascertain whether
 14 the viatical settlement provider or ~~the~~ **viatical settlement provider**
 15 applicant has violated or is violating the law or otherwise has acted or
 16 is acting contrary to the public interest.

17 (c) The viatical settlement provider or **viatical settlement provider**
 18 applicant shall pay the expenses of an examination conducted under
 19 this section.

20 SECTION 21. IC 27-8-19.8-19 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. After a hearing
 22 under IC 4-21.5, the department may suspend, revoke, or refuse to
 23 renew a viatical settlement provider's **or viatical settlement**
 24 **intermediary's** license, or impose a civil penalty, or both, if the
 25 department finds any of the following:

26 (1) There was a misrepresentation in the application for the
 27 license.

28 (2) The:

29 (A) **viatical settlement intermediary is untrustworthy or**
 30 **incompetent to act in the viatical settlement intermediary's**
 31 **capacity as a viatical settlement agent or viatical**
 32 **settlement broker; or**

33 (B) viatical settlement provider is untrustworthy or
 34 incompetent to act as a viatical settlement provider.

35 (3) The viatical settlement provider demonstrates a pattern of
 36 unreasonable payments to viators.

37 (4) The viatical settlement provider **or viatical settlement**
 38 **intermediary** has been convicted of, or pleaded guilty or nolo
 39 contendere to, an offense the definition of which includes
 40 fraudulent acts as an element of the offense regardless of whether
 41 a judgement has been entered by the court.

42 (5) The viatical settlement provider **or viatical settlement**

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intermediary no longer meets the requirements for initial licensure.

(6) The viatical settlement provider has failed to honor the contractual obligations of a viatical settlement contract.

(7) The viatical settlement provider **or viatical settlement intermediary** has violated this chapter.

SECTION 22. IC 27-8-19.8-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 24. A viatical settlement provider shall obtain the following before entering into a viatical settlement contract:

(1) If the viator is the insured, a written statement from a licensed attending physician that the insured is of sound mind and under no constraint or undue influence.

(2) A document signed by the viator and witnessed by two (2) disinterested witnesses in which the viator does the following:

(A) Consents to the viatical settlement contract.

(B) Acknowledges the catastrophic or life threatening illness **or condition.**

(C) Represents that the viator has a full and complete understanding of the viatical settlement contract.

(D) Represents that the viator has a full and complete understanding of the benefits of the life insurance policy.

(E) Acknowledges that the viator has entered into the viatical settlement contract freely and voluntarily.

(F) Discloses the identity of any person that served as a viatical settlement broker in connection with the viatical settlement contract.

(3) A document in which the insured consents to the release of the insured's medical records.

SECTION 23. IC 27-8-19.8-24.9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 24.9. (a) The viatical settlement provider or viatical settlement ~~broker~~ **intermediary** may contact the insured for the purpose of determining the health status of the insured not more than:

(1) one (1) time every three (3) months for an insured with a life expectancy of more than one (1) year; or

(2) one (1) time every month for an insured with a life expectancy of not more than one (1) year.

(b) Contacts made with an insured under subsection (a) must be made by mail unless the parties agree to another method of contact.

SECTION 24. [EFFECTIVE UPON PASSAGE] **(a) A viatical settlement intermediary shall comply with IC 27-8-19.8-9(1), as**

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1 amended by this act, and IC 27-8-19.8-10.1, as added by this act,
 2 not later than December 31, 2006.
 3 (b) This SECTION expires December 31, 2008.
 4 SECTION 25. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1646, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 11, line 5, delete "broker" and insert **"intermediary"**.

Page 11, line 6, delete "broker" and insert **"intermediary"**.

Page 11, delete lines 15 through 42, begin a new paragraph and insert:

"SECTION 6. IC 27-8-19.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "insured" refers to an individual ~~who has a catastrophic or life threatening illness or condition~~ **whose life is the subject of insurance under a life insurance policy or certificate.**

SECTION 7. IC 27-8-19.8-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.1. As used in this chapter, "viatical representative" means a person that offers or sells a viatical settlement purchase agreement.**

SECTION 8. IC 27-8-19.8-4.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.3. As used in this chapter, "viatical settlement agent" means a person that:

- (1) represents a viatical settlement provider; and**
- (2) solicits, offers, or attempts to negotiate a viatical settlement contract with a viator.**

SECTION 9. IC 27-8-19.8-4.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.7. As used in this chapter, "viatical settlement intermediary" means the following:**

- (1) A viatical settlement agent.**
- (2) A viatical settlement broker.**
- (3) A viatical representative.**

SECTION 10. IC 27-8-19.8-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 6.3. As used in this chapter, "viatical settlement purchase agreement" means an agreement through which a person other than a viatical settlement provider purchases or is assigned an interest in a:**

- (1) viaticated policy; or**
- (2) viatical settlement contract.**

SECTION 11. IC 27-8-19.8-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8.5. **In addition to the**

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licensure requirement specified in section 9(1) of this chapter, the following must be licensed as an insurance producer with a life qualification under IC 27-1-15.6-7:

- (1) A viatical settlement broker.
- (2) A ~~person who solicits, offers, or attempts to negotiate a viatical settlement contract with a viator:~~ **agent.**

SECTION 12. IC 27-8-19.8-8.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8.6. The following are exempt from the licensing ~~requirement under IC 27-8-19.8-8.5:~~ **requirements of sections 8.5 and 9(1) of this chapter:**

- (1) An accountant, an attorney, or a financial planner retained to represent the viator, and whose compensation is paid directly by or at the direction of the viator.
- (2) A regularly salaried officer or employee of a viatical settlement broker or viatical settlement provider, if the officer or employee's duties and responsibilities do not include the solicitation or negotiation of viatical settlement contracts.
- (3) The following persons, to the extent that the person is engaged in the administration or operation of a program of employee benefits for the person's employees or the employees of the person's subsidiaries or affiliates involving the use of viatical settlement contracts issued by a licensed viatical settlement provider, if the person is not in any manner directly or indirectly compensated by the viatical settlement provider:
 - (A) An employer.
 - (B) An officer or employee of an employer.
 - (C) A trustee of an employee trust plan."

Page 12, delete lines 1 through 5.

Page 12, line 9, delete "broker" and insert "**intermediary**".

Page 12, line 10, delete "broker" and insert "**intermediary**".

Page 12, line 33, delete "broker" and insert "**intermediary**".

Page 12, line 34, delete "broker" and insert "**intermediary**".

Page 12, line 37, delete "broker must" and insert "**intermediary must**".

Page 12, line 37, delete "broker examination" and insert "**intermediary examination**".

Page 12, line 40, delete "broker" and insert "**intermediary**".

Page 12, line 41, delete "broker" and insert "**intermediary**".

Page 13, line 5, delete "broker" and insert "**intermediary**".

Page 13, line 6, delete "broker" and insert "**intermediary**".

Page 13, line 7, delete "broker" and insert "**intermediary**".

Page 13, line 11, delete "broker" and insert "**intermediary**".

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Page 13, line 21, delete "broker." and insert **"intermediary."**

Page 13, line 25, delete "broker." and insert **"intermediary."**

Page 13, line 32, delete "broker" and insert **"intermediary"**.

Page 13, line 34, delete "broker license" and insert **"intermediary license"**.

Page 13, line 34, delete "broker:" and insert **"intermediary:"**.

Page 13, line 36, delete "broker's" and insert **"intermediary's"**.

Page 14, line 40, delete "broker" and insert **"intermediary"**.

Page 14, line 42, delete "broker" and insert **"intermediary"**.

Page 15, line 1, delete "broker" and insert **"intermediary"**.

Page 15, line 14, delete "broker" and insert **"intermediary"**.

Page 15, line 15, delete "broker" and insert **"intermediary"**.

Page 15, line 16, delete "broker" and insert **"intermediary"**.

Page 15, line 18, delete "broker" and insert **"intermediary"**.

Page 15, line 20, delete "broker" and insert **"intermediary"**.

Page 15, line 21, delete "broker" and insert **"intermediary"**.

Page 15, line 26, delete "broker" and insert **"intermediary"**.

Page 15, line 30, delete "broker" and insert **"intermediary"**.

Page 15, line 32, delete "broker" and insert **"intermediary"**.

Page 15, line 37, delete "broker" and insert **"intermediary"**.

Page 15, line 38, delete "broker" and insert **"intermediary"**.

Page 15, line 40, delete "broker's" and insert **"intermediary's"**.

Page 15, line 41, delete "broker" and insert **"intermediary"**.

Page 16, line 2, delete "broker" and insert **"intermediary"**.

Page 16, line 27, delete "broker's" and insert **"intermediary's"**.

Page 16, line 33, delete "broker" and insert **"intermediary"**.

Page 16, line 34, delete "as a viatical settlement broker;" and insert **"in the viatical settlement intermediary's capacity as a viatical settlement agent, viatical settlement broker, or viatical representative;"**.

Page 16, line 40, delete "broker" and insert **"intermediary"**.

Page 17, line 3, delete "broker" and insert **"intermediary"**.

Page 17, line 7, delete "broker" and insert **"intermediary"**.

Page 17, delete lines 8 through 32, begin a new paragraph and insert:

"SECTION 24. IC 27-8-19.8-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. A viatical settlement provider shall obtain the following before entering into a viatical settlement contract:

(1) If the viator is the insured, a written statement from a licensed attending physician that the insured is of sound mind and under no constraint or undue influence.

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(2) A document signed by the viator and witnessed by two (2) disinterested witnesses in which the viator does the following:

(A) Consents to the viatical settlement contract.

(B) **If the insured has a catastrophic or life threatening illness or condition**, acknowledges the catastrophic or life threatening illness **or condition**.

(C) Represents that the viator has a full and complete understanding of the viatical settlement contract.

(D) Represents that the viator has a full and complete understanding of the benefits of the life insurance policy.

(E) Acknowledges that the viator has entered into the viatical settlement contract freely and voluntarily.

(F) Discloses the identity of any person that served as a viatical settlement broker in connection with the viatical settlement contract.

(3) A document in which the insured consents to the release of the insured's medical records.

SECTION 25. IC 27-8-19.8-24.9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24.9. (a) The viatical settlement provider or viatical settlement ~~broker~~ **intermediary** may contact the insured for the purpose of determining the health status of the insured not more than:

(1) one (1) time every three (3) months for an insured with a life expectancy of more than one (1) year; or

(2) one (1) time every month for an insured with a life expectancy of not more than one (1) year.

(b) Contacts made with an insured under subsection (a) must be made by mail unless the parties agree to another method of contact.

SECTION 26. [EFFECTIVE JULY 1, 2005] **(a) A viatical settlement intermediary shall comply with IC 27-8-19.8-9(1), as amended by this act, and IC 27-8-19.8-10.1, as added by this act, not later than December 31, 2006.**

(b) This SECTION expires December 31, 2008."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1646 as introduced.)

RIPLEY, Chair

Committee Vote: yeas 11, nays 0.

EH 1646—LS 7467/DI 97+



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HOUSE MOTION

Mr. Speaker: I move that House Bill 1646 be amended to read as follows:

Replace the effective dates in SECTIONS 1 through 26 with "[EFFECTIVE UPON PASSAGE]".

(Reference is to House Bill 1646 as printed February 9, 2005.)

RIPLEY

HOUSE MOTION

Mr. Speaker: I move that House Bill 1646 be amended to read as follows:

Page 8, delete lines 32 through 42.

Delete pages 9 through 10.

Page 11, delete line 1.

(Reference is to HB 1646 as printed February 9, 2005.)

RIPLEY

HOUSE MOTION

Mr. Speaker: I move that House Bill 1646 be amended to read as follows:

Page 12, between lines 40 and 41, begin a new paragraph and insert the following:

"SECTION 14. IC 27-8-19.8-9.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9.2. An insurance producer that:**

(1) is licensed under IC 27-1-15.6; and

(2) sells a life insurance policy or contract that, less than two

(2) years after the insurance producer sells the policy or contract, is the subject of a viatical settlement contract;

shall not accept a commission or other remuneration in connection with the viatical settlement contract."

Re-number all SECTIONS consecutively.

(Reference is to HB 1646 as printed February 9, 2005.)

RIPLEY

EH 1646—LS 7467/DI 97+



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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1646, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 23-2-1-17.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 17.5. (a) This section applies to the following:**

- (1) The secretary of state.**
- (2) The securities commissioner.**
- (3) A prosecuting attorney.**
- (4) The attorney general.**
- (5) A designee of a person specified in subdivisions (1) through (4).**

(b) A person specified in subsection (a) shall not take any action against another person under this chapter solely because a:

- (1) viatical settlement contract; or**
- (2) fractional or pooled interest in a viatical settlement contract;**

that was the subject of a transaction in which the other person was involved before March 17, 2000, was not registered under this chapter.

(c) A person specified in subsection (a) shall not take any action against another person under this chapter solely because the other person did not, before March 17, 2000, comply with the:

- (1) registration requirements of this chapter; or**
- (2) requirements of this chapter that apply to a person that offers or sells securities in Indiana;**

if the other person did not, before March 17, 2000, offer or sell securities other than a viatical settlement contract or a fractional or pooled interest in a viatical settlement contract.

(d) A person specified in subsection (a) shall not take any action against another person under this chapter solely because the other person did not comply with the registration requirements referred to in subsections (b) and (c)."

Delete pages 2 through 7.

Page 8, delete lines 1 through 31, begin a new paragraph and insert:

"SECTION 2. IC 23-2-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 19. (a) A person**

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who offers or sells a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation, who may sue either at law or in equity to rescind the transaction or to recover the consideration paid, together, in either case, with interest as computed in subsection (g)(1), plus costs, and reasonable attorney's fees, less the amount of any cash or other property received on the security upon the tender of the security by the person bringing the action or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

- (1) the value of the security when the buyer disposed of the security; and
- (2) the interest as computed in subsection (g)(1) on the value of the security from the date of disposition.

(b) A person who purchases a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation. The other party to the transaction may bring an action to rescind the transaction or for damages, together, in either case, with reasonable attorney's fees, upon the tender of the consideration received by the person bringing the action.

(c) A person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues analyses or reports concerning securities and:

- (1) violates section 8, 12.1(b), 14, or 26 of this chapter;
- (2) employs a device, scheme, or artifice to defraud a person; or
- (3) engages in an act that operates or would operate as fraud or deceit upon a person;

is liable to the other person, who may bring an action to recover any consideration paid for advice, any loss due to advice, interest at eight percent (8%) each year from the date consideration was paid, costs, and reasonable attorney's fees less the value of cash or property received due to the advice. It is a defense to an action brought for a violation of

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section 12.1(b) or 26 of this chapter that the person accused of the violation did not know of the violation and, exercising reasonable care, could not have known of the violation.

(d) A person who directly or indirectly controls a person liable under subsection (a), (b), or (c), a partner, officer, or director of the person, a person occupying a similar status or performing similar functions, an employee of a person who materially aids in the conduct creating the liability, and a broker-dealer or agent who materially aids in the conduct are also liable jointly and severally with and to the same extent as the person, unless the person who is liable sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons liable.

(e) A tender specified in this section may be made at any time before entry of judgment.

(f) A cause of action under this statute survives the death of a person who might have been a plaintiff or defendant.

(g) Action under this section shall be commenced within three (3) years after discovery by **a governmental entity or** the person bringing the action of a violation of this chapter, and not afterwards. No person may sue under this section:

(1) if that person received a written offer, before suit and at a time when the person owned the security, to refund the consideration paid together with interest on that amount from the date of payment to the date of repayment, with interest on:

(A) interest-bearing obligations to be computed at the same rate as provided on the security; and

(B) all other securities at the rate of eight percent (8%) per year;

less the amount of any income received on the security, and the person failed to accept the offer within thirty (30) days of its receipt; or

(2) if the person received an offer before suit and at a time when the person did not own the security, unless the person rejected the offer in writing within thirty (30) days of its receipt.

(h) No person who has made or engaged in the performance of a contract in violation of this chapter or a rule or order under this chapter, or who has acquired a purported right under a contract with knowledge of the facts by reason of which its making or performance was in violation, may base a suit on the contract.

(i) A condition, stipulation, or provision binding a person acquiring

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a security to waive compliance with this chapter or a rule or order under this chapter is void.

(j) The rights and remedies specifically prescribed by this chapter are the only rights and remedies created by this chapter, but are in addition to any other rights or remedies that exist at law or in equity."

Page 9, delete lines 3 through 12.

Page 9, delete lines 25 through 33, begin a new paragraph and insert:

"SECTION 9. IC 27-8-19.8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter, "viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of a portion of the death benefit or ownership of a life insurance policy or contract **that insures the life of an insured** for consideration that is less than the expected death benefit of the life insurance policy or contract. The term does not include the following:

- (1) A loan by an insurer under the terms of a life insurance policy, including a loan secured by the cash value of a policy.
- (2) An agreement with a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.
- (3) The provision of accelerated death benefits by an insurer to an insured under the provisions of a life insurance contract.
- (4) Agreements between an insurer and a reinsurer.
- (5) An agreement by a person who enters into not more than one (1) such agreement in any five (5) year period to purchase a life insurance policy or contract for the transfer of a life insurance policy for a value that is less than the expected death benefit."

Page 11, line 11, delete "viatical settlement provider".

Page 13, line 30, after "**department**;" insert "**and**".

Page 13, line 31, delete "; and" and insert ".".

Page 13, delete lines 32 through 38.

Page 14, delete lines 9 through 31.

Page 15, line 22, delete "," and insert "**or**".

Page 15, line 23, delete ", or viatical representative;" and insert ";".

Page 16, line 8, delete "If the insured has a catastrophic or life threatening".

Page 16, line 9, delete "illness or condition, acknowledges" and insert "Acknowledges".

Page 16, after line 37, begin a new paragraph and insert:

"SECTION 24. **An emergency is declared for this act.**".

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1646 as reprinted February 18, 2005.)

PAUL, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1646 be amended to read as follows:

Page 1, between lines 10 and 11, begin a new line block indented and insert:

"(6) Any party with a cause of action under IC 23-2-1-19."

Page 1, line 12, delete "solely".

Page 2, line 8, after "not" delete "," and insert **"at the time of the offer or sale, and"**.

(Reference is to EHB 1646 as printed March 30, 2005.)

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Engrossed House Bill 1646 be amended to read as follows:

Page 3, line 36, delete "a governmental entity or".

Page 3, line 37, delete "." and insert **", but in no event shall an action be commenced more than five (5) years after the purchase or sale of a viatical settlement contract or fractional or pooled interest in a viatical settlement contract that occurred before March 17, 2000. This section does not affect a remedy to an individual bringing action under IC 34 or IC 27."**

(Reference is to EHB 1646 as printed March 30, 2005.)

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